

한국 영업비밀침해소송의 증거조사 목적으로 미국법원의 디스커버리 절차를 활용할 수 있는 미국법 조항 및 미국법원 Medytox vs Daewoong 판결 소개 블로그



미국법원, 한국법원에서 동시에 진행하고 있는 영업비밀침해 소송에 관한 뉴스입니다. 매우 중요한 사안으로 쟁점도 매우 흥미로운 사건입니다. 미국 로펌의 블로그에 올린 미국 법원의 최근 결정내용과 실무적 사항에 관한 포스팅을 소개합니다. 원문 링크: [Global](#)

[Reach: U.S. Federal Rules Provide Assistance for Discovery in Foreign Matters](#)

관련 미국법 조항 - 28 USC § 1782 Assistance to foreign and international tribunals and to litigants before such tribunals

(a) The district court of the district in which a person resides or is found may order

him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court. By virtue of his appointment, the person appointed has power to administer any necessary oath and take the testimony or statement. The order may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement or producing the document or other thing. To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure. A person may not be compelled to give his testimony or statement or to produce a document or other thing in violation of any legally applicable privilege.

(b) This chapter does not preclude a person within the United States from voluntarily giving his testimony or statement, or producing a document or other thing, for

use in a proceeding in a foreign or international tribunal before any person and in any manner acceptable to him.

### 관련소송 및 미국법원 판단의 개요

Medytox가 제기한 미국소송 중에서 Indiana 법원 사건에서 지난 7월 13일 메디톡스에서 위 조항에 의한 디스커버리 신청함 + 한국법원에 진행 중인 재판의 증거조사를 위해 미국 거주하는 증인에 대한 디스커버리 신청 + 미국법원은 위 신청을 받아들여 디스커버리 허용함

### 관련 미국 법리 설명

(1) 목적 - Section 1782 is intended to provide an efficient means of assistance to parties in international litigation seeking discovery domestically.

(2) 요건 - Before a district court can grant an application for discovery, four prima facie requirements must be met: (1) the request must be made "by a foreign or international tribunal," or by "any interested person"; (2) the request must seek evidence; (3) the evidence

must be “for use in a proceeding in a foreign or international tribunal”; and (4) the person from whom discovery is sought must reside or be found in the district of the district court ruling on the application for assistance.

(3) 판례법리 Intel v. Advanced Micro Devices, Inc 판결에서 제시한 고려요소: (1) whether “the person from whom discovery is sought is a participant in the foreign proceedings”; (2) “the nature of the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign government or the court or agency abroad to U.S. federal-court judicial assistance”; (3) whether the “§ 1782(a) request conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of a foreign country or the United States”; and (4) whether the discovery is otherwise “unduly intrusive or burdensome.”

영업비밀, 기술유출, 경업금지, 전직금지, 민형사소송, 다수사건 A~Z 수행경력

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